

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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ADRIANO REYES-FANA,	:
	:
Plaintiff,	:
	:
– against –	:
	:
MOCA GROCERY NY CORP., MARIO	:
DURAN AND ISIDRO RODRIGUEZ,	:
	:
Defendants.	:
-----	X

**ORDER ADOPTING REPORT
AND RECOMMENDATION**
21-CV-4493 (AMD) (RER)

ANN M. DONNELLY, United States District Judge:

On August 10, 2021, the plaintiff commenced this action against the defendants, alleging multiple violations of the Fair Labor Standards Act (“FLSA”) 29 U.S.C. § 201 *et seq.*, and the New York Labor Law (“NYLL”), N.Y. Lab. Law §§190 and 650 *et seq.* (ECF No. 1 at ¶ 1.)

The plaintiff alleges that between November 15, 2018 and March 19, 2020, he worked for the defendants at their grocery store stocking merchandise, disposing of trash, removing snow and maintaining the building’s fixtures. (*Id.* at ¶¶ 21, 23.) Although the plaintiff worked an average of 77 hours each week over the course of his employment, (ECF No. 10-2), the defendants did not pay him any wages at all. (ECF No. 1 at ¶ 24.) Instead, the defendants allowed him stay in a windowless room in the grocery store’s basement; the room did not have a certificate of occupancy or any access to hot water. (*Id.* at ¶¶ 24-25.)

The defendants did not answer or otherwise respond to the complaint. Accordingly, on December 10, 2021, the Clerk of Court entered a Certificate of Default, and on February 28, 2022, the plaintiff moved for default judgment against both defendants. (ECF Nos. 9, 10.) On

March 1, 2022, I referred the motion to United States Magistrate Judge Ramon E. Reyes, Jr. for report and recommendation.

On August 16, 2022, Judge Reyes concluded that the plaintiff's well-pleaded factual allegations, taken as true, constituted valid claims for which relief could be granted; Judge Reyes recommended that I grant the plaintiff's motion for default judgment as to Moca Grocery NY Corp., but deny it as to Mario Duran and Isidro Rodriguez because the plaintiff had not properly served the individual defendants pursuant to Local Rule 55.2(c). (ECF No. 12 at 2.)

Alternatively, in the event the plaintiff properly served Mario Duran and Isidro Rodriguez with copies of the motion and the Report and Recommendation, Judge Reyes recommended that I grant the plaintiff's motion as to all defendants. (*Id.*)

With respect to damages, Judge Reyes determined that the plaintiff had established damages to a "reasonable certainty," and recommended that the plaintiff be awarded a total of \$202,495.00: \$37,560.00 in unpaid minimum wage compensation, \$52,114.50 in unpaid overtime wage compensation, \$6,573.00 in unpaid spread of hours compensation, \$96,247.50 in liquidated damages and \$10,000.00 in statutory damages. (*Id.* at 35.) In addition, Judge Reyes recommended that the plaintiff receive \$26,696.25¹ in pre-judgment interest on the principal unpaid wages and post-judgment interest in accordance with 28 U.S.C. §1961. (*Id.*)

Furthermore, Judge Reyes recommended that if the defendants do not pay the plaintiff the total amount described above within 90 days following the issuance of judgment, or 90 days after the expiration of the time to appeal, the total amount of the judgment be increased by 15 percent pursuant to NYLL § 663(4). (*Id.* at 33.) Finally, Judge Reyes recommended that the plaintiff be

¹ Judge Reyes calculated pre-judgment interest through August 16, 2022. (ECF No. 12 at 30.) Accordingly, Judge Reyes recommended the plaintiff receive an additional \$23.73 per diem from August 17, 2022 until the date judgment is entered. (*Id.*)

granted 30 days from the date of this order to submit an application for attorney's fees. (*Id.*) On August 18, 2022, the plaintiff filed proof that he served the individual defendants at their last known residential addresses, in compliance with Local Rule 55.2(c). No objections have been filed to the Report and Recommendation, and the time for doing so has passed.

A district court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1). To accept those portions of the report and recommendation to which no timely objection has been made, "a district court need only satisfy itself that there is no clear error on the face of the record." *Jarvis v. N. Am. Globex Fund L.P.*, 823 F. Supp. 2d 161, 163 (E.D.N.Y. 2011) (internal quotation marks and citation omitted).

CONCLUSION

I have reviewed Judge Reyes's comprehensive Report and Recommendation and find no error. Accordingly, I adopt the Report and Recommendation in its entirety. I find that the plaintiff has adequately pleaded that he was an employee of the defendants within the meanings of the FLSA and the NYLL, and that he has also adequately pleaded violations of both statutes. Because the plaintiff has submitted proof of compliance with Local Rule 55.2(c), I also find that all defendants are joint and severally liable. I award the plaintiff \$202,495.00 in damages, plus \$26,696.25 in pre-judgment interest on the principal unpaid wages through August 16, 2022, and \$23.73 per diem in pre-judgment interest on the principal unpaid wages from August 17, 2022 until the date judgment is entered and post-judgment interest in accordance with 28 U.S.C. §1961. Should the defendants fail to pay the plaintiff the amounts specified above within 90 days of the date of judgment, the total amount of the judgment will automatically be increased by 15

percent, pursuant to NYLL § 663(4).² The plaintiff has 30 days from the date of this order to submit an application for attorney's fees. The Clerk of Court is respectfully directed to enter judgment in favor of the plaintiff and close this case.

SO ORDERED.

s/Ann M. Donnelly

ANN M. DONNELLY
United States District Judge

Dated: Brooklyn, New York
September 6, 2022

² Because the defendants have not filed timely objections to Judge Reyes' Report and Recommendation, they have waived their right to appeal this Court's order. *See* 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72; *Small v. Sec'y of Health & Human Servs.*, 892 F.2d 15, 16 (2d Cir. 1989).